

DECISION

TALBOT COUNTY BOARD OF APPEALS

Appeal No. 21 -1721

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals (the “Board”) at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 6:30 p.m. on May 9, 2022 on the Application of **Extreme Enterprises, LLC** (the “Applicant”).

The Applicant is requesting a special exception to permit a Product Recycling use (the “Proposed Use”) that will occupy 8.65 acres of land, more or less, on the easternmost portion of the subject property. This request is made in accordance with *Talbot County Code* (the “Code”) Chapter 190, Zoning, Article IV, §190-25.2, Table IV-I, §190-30.12, and Article VII, §190-56. The property is located at 7140 Barkers Landing Road, Easton, Maryland 21601 in the Agricultural Conservation (“AC”) Zone and is shown on Tax Map 43, Grid 10, as Parcel 74 (the “Property”). The Applicant is the owner of the Property.

Board members Frank Cavanaugh, Chairman, Louis Dorsey, Jr., Vice Chairman; Paul Shortall, Jeffrey Adelman, and Patrick Forrest were present for the hearing. Andrew C. Meehan, Esq. was present as attorney for the Board of Appeals. Staff members present were Brennan Tarleton, Assistant Planning Officer, Elisa Deflaux, Planner II, and Christine Corkell, Board Secretary. Ryan Showalter, Esq. of McAllister, DeTar, Showalter, and Walker, 100 N. West Street, Easton, Maryland 21601 represented the Applicant.

The Chairman inquired if all Board members had visited the site individually. He received affirmative responses from each member. Mr. Cavanaugh then requested that those planning to give testimony be identified and sworn. Sean Callahan, Eric Barber, Allen Bryan, Jr. and Mr. Showalter were sworn.

Exhibit 1. Application for a Special Exception with Attachment A (Special Exception Application Narrative);

Exhibit 2. Tax Map with subject property highlighted;

Exhibit 3. Notice of Public Hearing for Star Democrat;

Exhibit 4. Notice of Public Hearing and List of Adjacent Property Owners attached;

Exhibit 5. Special Exception Standards with Attachment B and Independent Procedures Disclosure and Acknowledgement Form;

Exhibit 6. Staff Report prepared by Elisa Deflaux, Planner II and Brennan Tarleton, Assistant Planning Officer;

Exhibit 7. Planning Commission Comments;

Exhibit 8. Aerial Map of the Property;

Exhibit 9. Operations Plan;

Exhibit 10. Board of Appeals Decision, Appeal No. 898, dated May 3, 1993;

Exhibit 11. Board of Appeals Decision, Appeal No. 1185, dated September 6, 2001;

Exhibit 12. Board of Appeals Decision, Appeal No. 12-1590, dated April 2, 2013;

Exhibit 13. Surface Mining License No. SL-0738;

Exhibit 14. Property Directions; and

Exhibit 15. Site Plan prepared by Lane Engineering, LLC.

Mr. Cavanaugh noted that Mr. Showalter was going to be representing the Applicant, and asked that he proceed. Mr. Showalter introduced himself. Mr. Showalter stated that he would be providing an informal presentation, as there is no community opposition to the Proposed Use and the Planning Commission and Staff have recommended that the Board approve the special exception. Mr. Showalter introduced Sean Callahan of Lane Engineering, to describe the siting of the Proposed Use on the Property. Mr. Showalter also introduced Eric Barber, an equipment salesperson, to describe the equipment to be used. Mr. Barber's company also supplied the equipment being used at the County's repurposing facility. The Applicant's narrative addresses each of the special exception criteria required by the *Code*.

Mr. Showalter stated that the Proposed Use did not exist in the *Code* or on the Property two years ago; it arose as a result of a recent text amendment recommended by the Planning Commission and passed by the County Council. The Applicant proposes to recycle two general types of products, general aggregate, such as asphalt, concrete, and masonry, and yard debris and wood waste, such as stumps, logs, and leaves. The recycled aggregate can be used for a variety of construction activities, and the recycled organic materials can be used for mulch, soil amendment, and the like instead of unnecessarily being deposited in the landfill. The Property is ideal for the Proposed Use because it is already actively used for mining and for weekend recreational uses. The Property was approved by special exception many years ago to provide

cover for the landfill. The roads have had truck traffic associated with the landfill and the mining uses on the Property for decades. Thus, the truck traffic generated by the Proposed Use will be compatible with that generated by the existing uses on the Property and in the immediate vicinity. The Property also has extensive vegetative screening and mulch sound berms to address noise generated by the recreational uses on the Property.

There are currently eight full-time employees on the Property. The Applicant does not intend to hire additional employees associated with the Proposed Use. Equipment will be brought in by a third party to crush or grind the materials to be recycled. No retail sales will occur on the Property, though contractors will be able to buy certain materials in bulk, and the Applicant's member, Allen Bryan, will use the recycled materials for his other businesses. The facility may be open a maximum of ten Saturdays per year to take in and sell materials, with processing only occurring during the week. The Applicant intends to construct an 80' by 200' pole building to house equipment and materials. The current mining operation is duly licensed, and all required permits and approvals for the Proposed Use will be obtained.

Upon questioning from the Board, Mr. Bryan stated that the materials proposed to be recycled on the Property are currently recycled at Dependable Sand and Gravel or the County's repurposing facility. A significant amount of wood waste is deposited in the landfill that could be recycled. There is a bioretention pond and a large water truck on site, and the Applicant will be adding a dry hydrant as well. Crushing will only occur two to four times per year for approximately one week at a time and should not be audible by neighboring property owners. Mr. Bryan did not believe the County has experienced any complaints with noise associated with its repurposing facility.

Mr. Callahan appeared to discuss the site of the Proposed Use on the Property. Mr. Callahan referred to the site plan, which will accompany the review process at the local and State level. The site plan depicts where the Proposed Use will be located on the Property as well as pertinent locations in the vicinity of the Property. If the special exception is approved, the Applicant will return to the Planning Commission to address more specific site plan requirements. The Proposed Use is compatible with existing mines and is common in other jurisdictions. Mr. Callahan described each page of the site plan.

Mr. Showalter offered Mr. Barber to answer any questions the Board may have regarding the equipment. The Board had no questions for Mr. Barber. Mr. Showalter then referred to the Staff Report, which sets forth the special exception criteria, and adopted the findings set forth therein and of the Planning Commission. Mr. Showalter noted that, under Maryland law, a special exception is presumptively valid and deemed appropriate where it meets all applicable criteria. The Property is unique in a favorable sense for the Proposed Use.

Mr. Cavanaugh asked if the Board members had questions regarding the special exception criteria. Hearing none, he asked members of the public who wished to be heard to come forward and be sworn to give testimony. After ascertaining that there were no members of the public who had questions or who wished to testify, Mr. Cavanaugh solicited comments from the Board members beginning with Mr. Shortall.

Mr. Shortall believed that there is a need for the Proposed Use and that it is in an appropriate location. Mr. Shortall did not anticipate a significant increase in traffic associated with the Proposed Use.

Vice Chairman Dorsey responded that he agreed with Mr. Shortall and did not see any problems with the Proposed Use, which fills a need. Vice Chairman Dorsey believes it is an appropriate location. Vice Chairman Dorsey asked Mr. Bryan to distinguish between the Proposed Use and the County's repurposing facility. Mr. Bryan stated that the County's repurposing facility is a full-time operation, and the Applicant's will be a smaller scale operation.

Mr. Adelman stated that he agreed with Mr. Shortall and Vice Chairman Dorsey and believed that the Applicant has met the special exception criteria for the Proposed Use.

Mr. Forrest agreed with Mr. Adelman and stated that the Proposed Use is a great use for an unusual property.

Chairman Cavanaugh stated that he also agreed with the other Board members and that he believed the Applicant has satisfied the special exception criteria for the Proposed Use. It is certainly better to recycle the materials described than to deposit them in the landfill, and the Property is an adequate location for the Proposed Use.

There being no other discussion, the Board made the following findings of fact and conclusions of law based on the Applicant's written responses, the testimony and the evidence presented:

1. The Applicant has submitted written application for a special exception to conduct Product Recycling on a parcel of real property zoned Agricultural Conservation (AC). The Table of Uses, *Code* §190-25.2 Table IV-1, permits Product Recycling in the AC district by special exception. Exhibit 1.
2. The public hearing was properly advertised, the property was posted, and the adjacent land owners were properly notified. Exhibits 3 and 4.
3. The Applicant proposes to dedicate approximately 8.65 acres of the Property, which totals 90.233 acres, to the Proposed Use. Exhibit 15.
4. The Property is designated on Tax Map 43, Grid 10 as Parcel 74. Exhibit 2.
5. The Proposed Use has received a favorable recommendation from the Planning Commission, with the conditions that the Applicant must obtain Major Site Plan approval and that the Applicant shall commence construction of the proposed improvements within eighteen (18) months of the date of the Board's approval. Exhibit 7.
6. The Proposed Use is consistent with the intent and purposes of the Talbot County Comprehensive Plan (the "Plan"). The Comprehensive Plan does not specifically address the practice of recycling solid waste products; however, there are overall benefits to recycling and reusing the bulk products generated by construction in the County, where the local service based economy supports much of the County's workforce. Collection, processing, storage, and re-use of solid waste saves space in the landfill and deters public nuisances such as open burning or burying of the solid waste materials, which directly has an impact of natural resource protection, a predominate goal of the Comprehensive Plan. The Comprehensive Plan endorses the expansion of existing businesses in Chapter 7, Economic Development and Tourism and in Chapter 9, Community Design and Appearance states that the redevelopment should result in an overall enhancement. Mineral extraction, motor cross track, and the Proposed Use are complementary to each other as a whole, where the performance standards can be used for dual purposes while integrating the land uses.

For example, the existing screening is in place and serves a dual purpose for the motor cross track and the Proposed Use. The addition of the Proposed Use utilizes an already developed parcel and does not sprawl out into any agricultural fields to establish the Proposed Use or require planting more trees to buffer the Proposed Use. Exhibits 5 and 6.

7. The Proposed Use will comply with the standards of the AC zoning district. The Applicant is not requesting any variances to modify the standards applicable to the Proposed Use or the AC zoning district. The Proposed Use will comply with the bulk standards spelled out in the *Code* for the AC zoning district and the supplemental setbacks for the Proposed Use. The screening is established and mature. The existing active mining operations allow the Proposed Use to be established at the same distance as the mining use of two hundred (200) feet and provides an allowance for the Proposed Use to utilize roads not designated by the Comprehensive Plan as minor arterial or major collector roads. Exhibit 6.
8. The scale, bulk, and general appearance of the Proposed Use are compatible with the adjoining land uses and with existing and potential land uses and will not be detrimental to the economic value of neighboring property. The Property contains an existing commercial and industrial use. Adjacent to the Property are problematic land uses, a landfill and a wastewater treatment plant, that have a greater impact on surrounding neighboring properties than an appropriately sited recycling use. The southern properties are large agricultural parcels that area screened and divided from the Property by Barkers Creek. Exhibit 6.
9. The Proposed Use will not constitute a nuisance to other properties and will not have significant, adverse impacts on the surrounding area due to trash, odors, noise, glare, vibration, air and water pollution, and other health and safety factors or environmental disturbances. Historic land use on Barkers Landing Road has accommodated much more impactful land uses than the Proposed Use with regard to noise, odor, and vibration. The Proposed Use should not generate any trash or odors. The operation will be permitted by Maryland Department of the Environment, Air Quality Compliance Division. The work area is set back off the access approximately one thousand four hundred (1,400) feet. The noises associated with the operation,

during day light hours, should not be any more noticeable than the day-to-day noises of the road traffic and the landfill. The equipment used for the mining operation will be utilized for the Proposed Use. Specialized equipment for aggregate processing and wood waste grinding will be arranged as needed. Exhibit 6.

10. The Proposed Use will not have a significant adverse impact on public facilities or services, including roads, schools, water and sewer facilities, police and fire protection, or other public facilities or services. A private septic system will serve the Property. No other facilities or services should be impacted. Additional fire protection measures will be implemented on site. For security, the Property will be gated and monitored when not in operation. Safety protocols should be similar to the mining operation for the Proposed Use. Exhibit 6.
11. The Proposed Use will not have a significant adverse impact upon marine, pedestrian, or vehicular traffic. The Applicant proposes on-site parking and circulation. The existing entrance has been improved to accommodate large trucks. No pedestrian or marine traffic will be impacted. Exhibit 6.
12. The Proposed Use will not produce traffic volumes, which would exceed the capacity of public or private roads in the area or elsewhere in the County, based on the road classifications established in Chapter 134 (Roads and Bridges) of the *Code* and other applicable standards for road capacity. The Applicant anticipates twenty (20) to thirty (30) more trips per day. The original special exception for the mining operation (Appeal 898) anticipated fewer than twenty (20) trips per day. The motor cross track is open approximately thirty-five (35) weekends a year (Appeal 12-1590) and the parking can accommodate one hundred seventy-five (175) vehicles. The existing land uses operate on different days of the week, thus eliminating conflicts between the existing land uses. According to § 134-12 D(2)(a)[1] of the *Code*, an impact study is not required if a proposed development creates less than fifty (50) daily trips (one way). Public Works will address impacts of the Proposed Use during the site plan process and determine if any measures or an impact study is required. In addition, having a local source for the recycling will provide material that is being imported from other areas currently, which should cause an overall decrease in traffic. Any vehicle access to proposed off-street parking areas and drive-in facilities will be

designed to minimize conflicts between vehicular, bicycle, and pedestrian traffic and to minimize impacts on adjacent properties and on public or private roads. In addition, any resulting commercial and truck traffic should neither use a residential street nor create a hazard to a developed residential area. The Property has a large gravel area for ample parking and circulation. No traffic from the Proposed Use will need to travel any of the neighboring residential streets except by the contractors who are removing the waste from properties to supply the Property. There will be no more bicycle or pedestrian traffic impacts than what already exists.

13. The Proposed Use will not significantly adversely affect wildlife with respect to the Property's vegetation, water resources, or its resources for supplying food, water, cover, habitat, nesting areas, or other needs of wildlife. The Property is located entirely outside the Critical Area. Environmentally sensitive features do exist on the site, such as steep slopes and a stream. However, the Property has been reviewed by Maryland Department of the Environment for the mining operation and has a current permit. Water quality and run-off will be addressed when the Applicant addresses stormwater management. More than forty-eight (48) acres of the Property remains forested. Forest conservation was addressed during the site plan process for the motorcross track, and the plan will be reviewed as part of the site plan for the Proposed Use to determine if the forest conservation plan needs to be updated.
14. For the reasons set out in the Board's findings, Vice Chairman Dorsey made a motion that the special exception No. 21-1721 permitting a Product Recycling use on the Property be **Granted**, subject to the conditions set out below. Mr. Forrest then seconded the motion. There being no further discussion, the Chairman called for a vote. The motion passed five in favor, zero opposed.

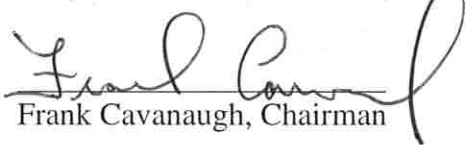
HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS, ORDERED THAT THE REQUESTED SPECIAL EXCEPTION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

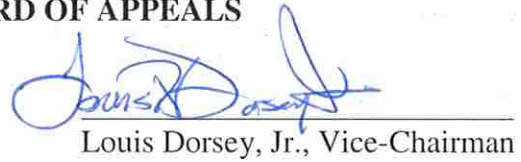
1. The Applicant must obtain Major Site Plan approval from the Planning Commission.

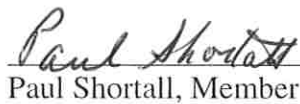
2. The Applicant shall commence construction of the proposed improvements within eighteen (18) months of the date of this Decision as set forth below.

GIVEN OVER OUR HANDS, this 23rd day of June, 2022.

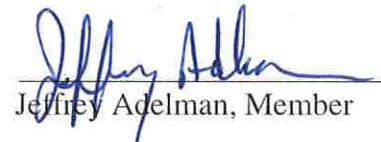
TALBOT COUNTY BOARD OF APPEALS


Frank Cavanaugh, Chairman


Louis Dorsey, Jr., Vice-Chairman


Paul Shortall, Member


Patrick Forrest, Alternate


Jeffrey Adelman, Member